

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAPHAEL MOSES SPEARMAN,)
Plaintiff,)
vs.) Civil Action No. 14-1751
Judge Mark R. Hornak/
Magistrate Judge
LIEUTENANT A.J. MORRIS, *et al.*,) Lisa Pupo Lenihan
Defendants.)
)

O R D E R

AND NOW, this 29th day of October 2015, after the Plaintiff, Raphael Moses Spearman, filed an action in the above-captioned case, and after a Report and Recommendation was filed by the United States Magistrate Judge giving Plaintiff until October 26, 2015 to file written objections thereto, and after Plaintiff filed written objections on October 23, 2015, and upon independent review of the record and consideration of the Magistrate Judge's Report and Recommendation and Plaintiff's objections thereto,

IT IS HEREBY ORDERED for the reasons set forth in that Report and Recommendation, (ECF No. 27), which is adopted as the Opinion of the Court, Defendants' Motion to Dismiss, (ECF No. 17), converted into a Motion for Summary Judgment, (ECF No. 19), is GRANTED and Plaintiff's Complaint, (ECF No. 3), is dismissed with prejudice for his failure to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act. While Plaintiff makes two objections to the Magistrate Judge's Report and Recommendation, those objections do not

undermine her finding that Plaintiff did not exhaust his administrative remedies. The Magistrate Judge found that Plaintiff failed to complete the grievance appeal process with respect to the two grievances (Grievance Nos. 496046 and 497318) that he filed concerning the matters alleged in his Complaint. Plaintiff first objects by stating that he could not complete the exhaustion requirement with respect to these two grievances because he was threatened with “retaliation” and “wrong doing” by the named Defendants in this action. This argument, however, is incredible given that Plaintiff did file these two grievances to final review, and the only thing that prevented him from properly completing the appeal process was his failure to include necessary material with his appeal. His argument is also unconvincing because Plaintiff stated in his response to the Defendants’ motion to dismiss that he believed he did complete the appeal process with respect to these two grievances. Given this information, his claims that he was in fear of retaliation are unconvincing and implausible.

Plaintiff also objects to the Magistrate Judge’s Report and Recommendation stating that his administrative remedies were unavailable to him because Defendant Hollowood threatened to interfere with his pending criminal case if he did not withdraw Grievance No. 495662. While the record does reveal that Plaintiff withdrew this grievance, a review of the grievance itself reveals that its contents do not relate to the matters alleged in Plaintiff’s Complaint. Plaintiff filed Grievance No. 495662 on January 30, 2014, complaining that he had not yet received back legal documents that he sent to the library to be copied.¹ While Plaintiff does state in his Complaint that his legal work was never returned to him, he claims that this is because Defendant Hollowood destroyed it, which is the subject of Plaintiff’s grievances cited above (Grievance

¹ There are no names mentioned in the grievance apart from the librarian, who is not a defendant in this action.

Nos. 496046 and 497318) that he did not properly exhaust. Therefore, even if Plaintiff had not withdrawn and properly exhausted his administrative remedies with respect to Grievance 495662, it does not alter the outcome of this action because Plaintiff did not exhaust his administrative remedies with respect to the allegations in his Complaint. His objections, therefore, are without merit.

IT IS FURTHER ORDERED that the Clerk of Court mark this case closed.

AND IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R. App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.



MARK R. HORNAK
United States District Judge

cc: Honorable Lisa Pupo Lenihan
United States Magistrate Judge

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